

Gregory G. Paul (SBN 233060)  
gregpaul@morgan-paul.com  
Morgan & Paul, PLLC  
131 A Stony Circle  
Santa Rosa, CA 95401  
(844) 374-7200  
(844) 374-7200 (facsimile)

Jeff R. Dingwall (SBN 265432)  
jeff@eightandsandlaw.com  
Eight & Sand  
550 West B Street, Fourth Floor  
San Diego, CA 92101  
Tel: (619) 796-3464  
Fax: (619) 717-8762  
jeff@eightandsandlaw.com

*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

CARLTON WRIGHT,

Plaintiff,

v.

UNION PACIFIC RAILROAD  
COMPANY,

Defendant.

Case No.

**COMPLAINT**

Plaintiff Carlton Wright, by and through his attorneys, and files the following Complaint under the Americans with Disabilities Act, as amended (ADAAA), and the Rehabilitation Act, as amended (RA). If Union Pacific Railroad Company had evaluated Mr. Wright based upon his experience as a

1 railroad conductor over the course of eighteen years, and not upon their  
2 misperception and record of his diagnosis of Hypertrophic Cardiomyopathy,  
3 without symptoms, Mr. Wright would and should be working today. Mr.  
4 Wright's implant of an Automatic Implantable Cardiac Defibrillator (AICD)  
5 removes any established risk precluding return to work as a conductor. To the  
6 extent that Union Pacific argues that the AICD or any underlying medical  
7 condition creates any established risk of harm, Union Pacific failed to provide  
8 reasonable accommodations including non-competitive reassignment to vacant  
9 and funded positions, for which they have a policy and practice not to do in  
10 violation of the ADAAA and Rehabilitation Act. As a result of these violations of  
11 federal law, Mr. Wright seeks all available damages including reinstatement to his  
12 former position as a conductor and in the alternative, available vacant and funded  
13 positions system-wide and in the City of Industry, California.

### 14 **PARTIES**

15 1. The plaintiff, Carlton Wright, is an adult individual, residing in Little  
16 Rock, AR 72223.

17 2. The Defendant, Union Pacific Railroad Company hereinafter  
18 referred to as ("Union Pacific"), is an international transportation company  
19 offering a variety of rail, container-shipping, intermodal, trucking and contract  
20 logistics services and located at 1400 Douglas Street, Omaha, Nebraska 68179,

1 with regional offices in Roseville, California, and vacant and funded positions  
2 including in the City of Industry, California for which Mr. Wright applied.  
3

#### 4 **JURISDICTION AND VENUE**

5 3. This is an action under the Section 504 of the Rehabilitation Act of  
6 1973, as amended, (“Rehabilitation Act”), 29 U.S.C. §794 *et. seq.*, and the  
7 (“ADAAA”), 42 U.S.C. §§12101, *et. seq.*, Plaintiff seeks declaratory, injunctive  
8 and compensatory and punitive relief for denial of employment on the basis of  
9 disability, regarded as, record of disability as defined by the applicable statutes  
10 and/or denial of a reasonable accommodations by Union Pacific.  
11

12 4. Venue is properly laid in this district pursuant to 28 U.S.C. §1391(b)  
13 because the defendant resides within this district and a substantial part of the  
14 events giving rise to the claim occurred in this district, including the special  
15 venue statute under the ADAAA and Rehabilitation Act, where any person would  
16 have worked but for the alleged unlawful practice. 29 U.S.C. 794(a),  
17 incorporating Title VII at 42 U.S.C. 2000e-5(f)(3).  
18

19 5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and  
20 1343. This action is authorized and instituted pursuant to Section 504 of the  
21 Rehabilitation Act and under the Americans with Disabilities Act.  
22

23 6. The defendant is a covered employer within the meaning of the  
24 Rehabilitation Act and ADAAA because, among other things, they employ the  
25 requisite number of employees during the relevant time period.  
26  
27  
28

1           7.     The Plaintiff was denied employment because of his disability or  
2 was regarded as disabled based on a perception that he was substantially limited  
3 in one or more major life activities and/or was regarded as disabled or record of  
4 disability by Union Pacific that this disability prevented him from performing the  
5 job held or desired and was refused an accommodation by Union Pacific for this  
6 medical conditions including Hypertrophic Cardiomyopathy. At all times relevant  
7 to this lawsuit, Plaintiff was a qualified individual with a disability who possessed  
8 the requisite qualifications to perform the essential functions of his freight  
9 conductor job, with or without an accommodation.  
10

11           8.     At all relevant times, Union Pacific has received federal financial  
12 assistance, thereby rendering Section 504 of the Rehabilitation Act applicable to  
13 its employment programs and activities.  
14

### 15                               STATEMENT OF FACTS

16           9.     Carlton Wright was employed by Union Pacific, and its predecessor  
17 railroads, as a railroad conductor beginning on or about April 20, 1998.  
18

19           10.    On or about October 13, 2016, Mr. Wright requested medical leave  
20 and underwent surgery to implant an Automatic Implantable Cardiac Defibrillator  
21 (AICD), as a result of a diagnosis of Hypertrophic Cardiomyopathy.  
22

23           11.    After appropriate treatment and a medical leave of absence, Mr.  
24 Wright was released to return to work on December 9, 2016.  
25  
26  
27  
28

1           12. More specifically, his treating cardiologist released him to return to  
2 work without any medical restrictions on December 9, 2016.  
3

4           13. However, Union Pacific, through its non-examining medical review  
5 board, determined that Mr. Wright was permanently disqualified from any safety-  
6 sensitive job, erroneously applying the standards for commercial motor carrier  
7 drivers under the Federal Motor Carriers Safety Act.  
8  
9

10          14. Mr. Wright never worked as a railroad engineer or a commercial bus  
11 driver; therefore the FMCSA standards are inapplicable and irrelevant to the job  
12 duties of a railroad conductor who does not operate locomotives.  
13

14          15. Despite the Union Pacific's permanent medical disqualification from  
15 return to work as a railroad conductor for which Mr. Wright had eighteen years of  
16 seniority, Union Pacific refused to consider non-competitive reassignment to  
17 other available jobs, including transportation training coordinator positions in  
18 various locations system-wide and in City of Industry, California.  
19  
20

21          16. Mr. Wright was released to return to work at the railroad on  
22 December 9, 2016.  
23  
24

25          17. On or about January 19, 2017, Union Pacific determined that Mr.  
26 Wright was medically disqualified from his former position as a conductor and  
27 other safety-sensitive positions.  
28

1           18.     Union Pacific never sent Mr. Wright for a functional capacity test or  
2 field test to determine his actual ability to perform the essential functions of his  
3 former position or alternate positions.  
4

5           19.     Mr. Wright has never experienced any episode of syncope or other  
6 symptoms calling in to question his ability to return to work as a conductor or  
7 alternate positions.  
8

9           20.     Mr. Wright is aware of other comparator freight and engine  
10 employees with a history of cardiac impairments who have returned to work in  
11 conductor and other positions on the railroad, with and without reasonable  
12 accommodations including John Larson.  
13

14           21.     Union Pacific further changed its reasons for refusing employment  
15 opportunities from relying on the FMCSA to electromagnetic fields to the  
16 Medical Director's statement that "if they have hypertrophic cardiomyopathy they  
17 won't return (to safety-sensitive positions)". Union Pacific refused to engage in  
18 the interactive process to consider reasonable accommodations including non-  
19 competitive reassignment to alternate positions despite Mr. Carlton's desire to  
20 work including applications for employment system-wide and most recently on  
21 July 3, 2018 for a vacancy in City of Industry, California.  
22

23           22.     Following its investigation into the above, the Equal Employment  
24 Opportunity Commission issued a Cause Determination. (Attached as Ex. 1).  
25  
26  
27  
28

1 Following a failure to reach conciliation, the EEOC issued a Right to Sue Letter,  
2 to which Mr. Wright timely files this Complaint following the exhaustion of  
3 administrative remedies under the ADAAA. Claims under the Rehabilitation Act  
4 do not require administrative exhaustion.  
5

6  
7 **COUNT I**

8 **Medical Disqualification: Allegations of Defendant's Violation**  
9 **of the Americans With Disabilities Act and Rehabilitation Act**

10 23. Mr. Wright incorporates by reference all of the above allegations set  
11 forth in this Complaint.

12 24. Mr. Wright was at all relevant times capable of performing the  
13 essential functions of a freight conductor with or without accommodations.  
14

15 25. Mr. Wright was not allowed to return to work, because Mr. Wright  
16 was disabled, regarded as disabled and/or had a record of disability within the  
17 meaning of the Americans With Disabilities Act and Rehabilitation Act.  
18

19 26. As a result of this conduct, Union Pacific has caused Mr. Wright the  
20 loss of wages and other job benefits and emotional and other harm including  
21 punitive damages.  
22

23  
24 **COUNT II**

25 **Denial of Reasonable Accommodations: Allegations of Defendant's**  
26 **Violation of the Americans With Disabilities Act and Rehabilitation Act**

27 27. Mr. Wright incorporates by reference all of the above allegations set  
28 forth in this Complaint.

1           28. Mr. Wright was at all relevant times capable of performing the  
2 essential functions of a freight conductor with or without accommodations. To the  
3 extent that Union Pacific maintains that plaintiff creates a “direct threat” due to  
4 his actual cardiac impairment or a record of such impairment, defendant has  
5 failed and continues to fail to provide a reasonable accommodations including job  
6 modification and/or non-competitive reassignment to alternate positions.  
7

8  
9           29. Mr. Wright was not allowed to return to work, because Mr. Wright  
10 was disabled, regarded as disabled and/or had a record of disability within the  
11 meaning of the Americans with Disabilities Act and Rehabilitation Act with or  
12 without accommodations.  
13  
14

15           30. As a result of this conduct, Union Pacific has caused Mr. Wright the  
16 loss of wages and other job benefits and emotional and other harm and punitive  
17 damages.  
18

19                           **PRAYER FOR RELIEF (All Counts)**

20  
21           WHEREFORE, Mr. Wright demands:

22           1. Judgment against defendant jointly and severally in an amount to  
23 make him whole for all damages suffered by him as a result of defendant’s  
24 violation of the Americans with Disabilities Act and Rehabilitation Act, including  
25 but not limited to, damages for back pay and benefits, front pay, compensatory  
26 damages, punitive damages and all other damages recoverable under the above  
27 laws plus prejudgment, offset for tax consequences and other interest;  
28

1           2.     That this Court enjoin defendant from further violating the above  
2 laws;  
3

4           3.     That this Court order defendant to reinstate Mr. Wright to the  
5 position he sought when defendant unlawfully disqualified him with all seniority  
6 and benefits he would have otherwise accrued had not defendant violated the  
7 above laws;  
8

9           4.     That this Court award Mr. Wright expert witness fees, attorneys' fees  
10 and the cost of bringing this action; and  
11

12           5.     That this Court grant his all other relief that he is entitled to under  
13 law and equity.  
14

15  
16           **A JURY TRIAL IS DEMANDED.**  
17

18  
19 DATED: July 20, 2018  
20

Respectfully submitted,

21 MORGAN & PAUL, PLLC  
22

23 /s/ Gregory G. Paul  
24 GREGORY G. PAUL  
25

26 /s/ Jeff R. Dingwall  
27 JEFF R. DINGWALL  
28